

IN THE HENDRICKS SUPERIOR COURT
CAUSE NO. 32D03-0410-PL-54

Defendant.

1. On February 16, 2005, the State of Indiana filed an Amended Complaint for Injunction, Consumer Restitution, Civil Penalties, and Costs with this Court alleging that the Defendant was in violation of the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, et seq., and the Indiana Home Improvement Contracts Act, Indiana Code § 24-5-11-1, et seq.
2. On May 25, 2005, this Court granted Plaintiff's Motion for Default Judgment and entered a Default Judgment against Defendant. Pursuant to this Judgment, the Defendant was

enjoined from further violations of the Indiana Deceptive Consumer Sales Act and the Indiana Home Improvement Contracts Act.

3. Since at least May of 2008, the Defendant, individually and doing business as West Tree Experts and Mid-Western Tree Experts, has advertised himself as a member of both the Tree Care Industry Association and International Society of Arboriculture.

4. Defendant is not now, nor has ever been a registered member of the Tree Care Industry Association or the International Society of Arboriculture.

5. On July 21, 2008, Defendant, doing business as Mid-Western Tree Experts, entered into a contract with Julia McDarby to provide services including the removal and clean up of trees and tree stumps for a total contract price of Twenty-Two Thousand Nine Hundred Ten Dollars (\$22,910.00).

6. On July 31, 2008, Defendant received the final installment of payment from Ms. McDarby in the amount of Twelve Thousand Four Hundred Ten Dollars (\$12,410.00).

7. After receiving the final installment from Ms. McDarby, Defendant vacated the premises despite the fact that many felled trees remained for cleanup. Defendant never returned to clean up the felled trees despite the fact he was contractually bound to do so. Ms. McDarby was forced to hire Roger Carlton to complete the job at the cost of Five Hundred Dollars (\$500.00).

8. Despite the requirements of Indiana Code § 24-5-11-10 and the Default Judgment, the Defendant failed to include the following information in his contract with Ms. McDarby:

- a. The address of the home improvement supplier and each of the telephone numbers and names of any agent whom consumer problems and inquires can be directed;

- b. Any time limitation on the consumer's acceptance of the home improvement contract;
- c. The approximate starting and completion dates of the home improvement;
- d. A statement of any contingencies that would materially change the approximate completion date; and
- e. A legible printed or typed version of Defendant and Ms. McDarby's names placed directly after or below their signatures.

9. Defendant has failed to either complete the work or provide a refund to Ms. McDarby, in violation of Indiana Code § 24-5-0.5-3(a)(10).

10. Defendant has represented to Ms. McDarby that he was a member of the Tree Care Industry Association and the International Society of Arboriculture when soliciting business and entering into the contract with Ms. McDarby when he knew or should reasonably have known that he was not, in violation of Indiana Code 24-5-0.5-3(a)(1).

11. On or about May 22, 2008, Defendant, doing business as Mid-Western Tree Experts, entered into a contract with Ruby Larson to remove certain trees on Ms. Larson's property at a total cost of Three Thousand Eight Hundred Dollars (\$3,800.00).

12. Defendant received Six Hundred Dollars (\$600.00) as a down payment from Ms.

Larson.

13. Defendant never performed his obligations under the contract with Ms. Larson.

14. Despite the requirements of Indiana Code § 24-5-11-10 and the Default Judgment, the Defendant failed to include the following information in his contract with Ms. Larson:

- a. The address of the Defendant and each of the telephone numbers and names of any agent whom consumer problems and inquiries can be directed;
- b. Any time limitation on the consumer's acceptance of the home improvement contract;
- c. The approximate starting and completion dates of the home improvement;
- d. A statement of any contingencies that would materially change the approximate completion date; and
- e. A legible printed or typed version of Defendant and Ms. Larson's names placed directly after or below their signatures.

15. Defendant has failed to either complete the work or provide a refund to Ms. Larson, in violation of Indiana Code § 24-5-0.5-3(a)(10).

16. Defendant has represented to Ms. Larson that he was a member of the Tree Care Industry Association and the International Society of Arboriculture when soliciting business and entering into the contract with Ms. Larson, when he knew or should reasonably have known that he was not in violation of Indiana Code 24-5-0.5-3(a)(1).

17. On or about March 28, 2007, Defendant entered into a verbal agreement with ~~Russell Greeley to perform landscaping duties at a cost of One Thousand Nine Hundred Dollars~~ (\$1,900.00).

18. Mr. Greeley paid in full, One Thousand Nine Hundred Dollars (\$1,900.00), to Defendant prior to Defendant commencing performance of his obligations.

19. Defendant has failed to either complete the work or provide a refund to Mr. Greeley, in violation of Indiana Code § 24-5-0.5-3(a)(10).

20. Defendant represented to Mr. Greeley that he would be able to purchase the subject of the consumer transaction, as advertised by Defendant, when Defendant did not intend to sell it, in violation of Indiana Code § 24-5-0.5-3(a)(11).

21. On September 8, 2008, this Court issued an Order to Appear to the Defendant, requiring him to appear on October 21, 2008 at 3:15 p.m. and show cause as to why he should not be punished for Contempt of Court for failing to comply with the Default Judgment of May 25, 2005.

22. Pursuant to Indiana Code § 24-5-0.5-4(d), the Court may void any contracts entered into by the Defendant that result from deceptive acts and order restitution to be paid to aggrieved consumers.

23. Pursuant to Indiana Code § 24-5-0.5-4(c)(2), the Plaintiff is entitled to recover any money unlawfully received from aggrieved consumers to be held in escrow for distribution to aggrieved consumers.

24. Pursuant to Indiana Code § 24-5-0.5-4(f), the Plaintiff is entitled to recovery of its reasonable costs and expenses in obtaining this order.

25. Deputy Attorney General Greg A. Schrage has submitted his Affidavit of Attorney's Fees and the State is entitled to recover its reasonable costs in the amount of Five ~~Hundred Fifty Dollars (\$550.00).~~

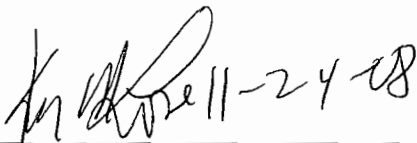
26. The above mentioned acts of the Defendant constitute knowing and intentional violations of the prior injunction issued by this Court, and pursuant to Indiana Code § 24-5-0.5-4(f), entitle the Plaintiff to recover a civil penalty of not more than Fifteen Thousand Dollars (\$15,000.00) per violation.

27. As a result of the Defendant's above mentioned violations of the injunction, Plaintiff, State of Indiana, should be awarded Three Thousand Dollars (\$3,000.00) in consumer restitution for the benefit of Ms. McDarby, Ms. Larson, and Mr. Greeley; costs in the amount of Five Hundred Fifty Dollars (\$550.00); and civil penalties in the amount of Forty-Five Thousand Dollars (\$45,000.00).

THEREFORE, THE COURT NOW FINDS the Defendant, James West, Jr., guilty of Contempt of this Court due to his knowing and intentional violation of this Court's injunction against further violations of the Indiana Deceptive Consumer Sales Act, and the contracts entered into by the Defendant with Consumers Julia McDarby, Ruby Larson, and Russell Greeley are hereby declared void. Therefore, it is ORDERED, ADJUDGED, AND DECREED that the Defendant, James West, Jr., is to pay the following for his contempt:

1. Consumer restitution to the State of Indiana, for the benefit of Julia McDarby, Ruby Larson, and Russell Greeley, in the amount of Three Thousand Dollars (\$3,000.00).
2. Costs in the amount of Five Hundred Fifty Dollars (\$550.00), to the Indiana Office of the Attorney General, pursuant to Indiana Code § 24-5-0.5-4(f).
3. Civil penalties in the amount of Fifteen Thousand Dollars (\$15,000.00), to the State of Indiana pursuant to Indiana Code § 24-5-0.5-4(f).

All of which is ordered this _____ day of _____, 2008.



Karen M. Love, Judge
Hendricks County Superior Ct. 3

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